

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Akron-East Station
Akron, Ohio

Docket No. A2011-16

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

August 5, 2011

I. INTRODUCTION

On May 16, 2011, the Commission received two petitions for review of the closing of the East Akron Station in Akron, Ohio (East Akron Station).¹ The Postal Service decision that is the subject of this proceeding was made on March 29, 2011.² That decision was communicated to customers by letter dated April 11, 2011.³

On May 19, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.⁴ On June 10, 2011, the City of Akron, Ohio, (Akron) filed a notice of intervention and a motion to compel the Postal Service to file the Administrative Record (AR).⁵ Notwithstanding its opposition to the motion, the Postal Service filed the

¹ Petition for Review Received from Paul J. Connor, May 11, 2011 (Connor Petition); and Petition for Review Received from Shirley Strader, May 11, 2011 (Strader Petition).

² Final Determination to Close the Akron, Ohio Classified Station and Continue to Provide City Delivery, Retail and Post Office Box Service Through the South Arlington, Ohio Station, April 11, 2011. (Final Determination). The Final Determination was filed with the Commission on May 31, 2011. Notice of the United States Postal Service, May 31, 2011 (Postal Service Notice).

³ Postal Service Notice at 3.

⁴ Notice and Order Accepting Appeal and Establishing Procedural Schedule, May 19, 2011 (Order No. 733).

⁵ Notice of Intervention, City of Akron, Ohio, June 10, 2011; and City of Akron, Ohio's Motion to Compel Administrative Record and Extend the Deadline for Petitioner and City of Akron, Ohio to File Form 61 and/or Initial Brief, June 10, 2011 (Akron Motion to Compel). The Akron Motion to Compel was supported by the Public Representative and opposed by the Postal Service. Answer of the Public

Administrative Record on June 17, 2011.⁶ On that same day, June 17, 2011, the Commission denied a request by one of the petitioners to suspend the station's closing pending completion of this review proceeding.⁷ As a result, the station closed on June 17, 2011. See AR at 489-490.⁸

II. STATEMENT OF FACTS

Prior to its closure the East Akron Station was located at 1763 Goodyear Boulevard, Akron, Ohio. AR Item No. 40, at 2. In its Final Determination, the Postal Service describes the East Akron Station as a Classified Station. Final Determination at 1. Before it was closed, the East Akron Station provided service to 188 post office box customers, 9,991 city delivery customers, and to retail customers who purchased such products and services as stamps, money orders, registered and certified letters, and Express Mail. *Id.*

On July 14, 2009, customers learned of the possible closure of the East Akron Station when questionnaires were distributed to 211 post office box customers. On that same day, 100 questionnaires were made available at the counter line to walk-in retail customers. AR Item No. 30 at 1. Ninety-four questionnaires were returned. *Id.* Of those customers expressing an opinion, all were unfavorable. *Id.*

Sometime after the original questionnaires were distributed, the Postal Service discovered that the those questionnaires had erroneously advised customers that the Postal Service was considering the possibility of consolidating the East Akron Station with the Akron Main Office, when, in fact, it was the possibility of consolidation with the South Arlington Station that was being considered. AR Item No. 32 at 2. On November

Representative in Support of Petitioner's Motion to Compel and to Extend Deadline for Filing Form 61 and/or Initial Brief, June 17, 2011; and Response of United States Postal Service to City of Akron, Ohio's Motion to Compel Administrative Record, June 16, 2011.

⁶ United States Postal Service Notice of Filing and Application for Non-Public Status, June 17, 2011. The Administrative Record was submitted in both a redacted public version and a non-public redacted version. Unless indicated otherwise, this reply brief will refer to the redacted public version.

⁷ Order Denying Application for Suspension, June 17, 2011 (Order No. 748).

⁸ The cited pages are part of the Administrative Record, but were not assigned Item numbers.

20, 2010, the error was corrected by redistributing the questionnaire to 286 post office box customers and by making another 100 questionnaires available at the counter line to retail walk-in customers. AR Item No. 33 at 1. Twenty-two questionnaires were returned.⁹ *Id.* Once again, all of the customers expressing an opinion had an unfavorable reaction to the proposed closure of the East Akron Station. *Id.*

On December 3, 2010, the Official Record was forwarded to Postal Service Headquarters together with a proposal to consolidate the East Akron Station and to continue providing service through the South Arlington Station. AR Item Nos. 41 and 40. The proposal was approved by the Final Determination dated March 29, 2011. The decision was based upon (1) a decline in retail transactions and revenues; (2) the availability of postal services at other facilities in close proximity; and (3) estimated annual savings to the Postal Service of approximately \$93,475. *Id.* at 1 and 4. The Final Determination also considered and responded to various concerns expressed by postal customers in responses to the Postal Service's two rounds of questionnaires. *Id.* at 1-4.

As noted above, the decision to close the East Akron Station was communicated to customers by letter dated April 11, 2011.

III. POSITIONS OF THE PARTIES

A. Akron

In its initial brief filed July 11, 2011, Akron presents five arguments in support of its challenge to the closure of the East Akron Station.¹⁰ Those three arguments are: (1) that meaningful consideration was not given to the situation of senior citizens, low income individuals, or the disabled; (2) that the Postal Service fails to provide

⁹ While the number of customers responding to the questionnaire was substantially lower than the number who responded to the July 14, 2009 questionnaire, it should be noted that November 20, 2010, was the Friday before Thanksgiving.

¹⁰ City of Akron, Ohio's Initial Brief, July 11, 2011 (Akron Brief).

information demonstrating how it will provide effective postal services at the South Arlington Station in light of the fact that the customer base will double at that station following its consolidation with the East Akron Station; (3) that the Postal Service has overestimated the economic savings that it projects will result from the consolidation of the two stations; (4) that the Final Determination fails to take into consideration the criteria of section 404(d); and that the Postal Service failed to follow the requisite procedures in closing the East Akron Station. Akron Brief at 4-7.

B. The Postal Service

On July 25, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 733.¹¹ In that filing, the Postal Service once again reiterates its position that the East Akron Station is not a "post office" and is therefore not subject to 39 U.S.C. § 404(d) or 39 CFR § 241.3. *Id.* at 1-2. It also repeats its argument that the procedural requirements of section 404(d) do not apply to cases like this in which customers do not lose access to postal services. *Id.* at 2. Finally, the Postal Service argues that even if the requirements of section 404(d) applied, it has met those requirements because: (1) it has met all procedural requirements; and (2) it has considered all pertinent criteria, including the effect of the closing on postal services, the community, employees, and the economic savings from the discontinuance of the East Akron Station. *Id.* at 3-5.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination on the basis of the record that was before the Postal Service.

¹¹ Comments of United States Postal Service, July 25, 2011 (Postal Service Comments).

The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.¹²

B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

¹² Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal.

V. ARGUMENT

A. The Commission Has Jurisdiction Over Closure of the East Akron Station

The Commission has repeatedly rejected the Postal Service's assertions that stations and branches are not "post offices" under section 404(d)(5). Docket No. A2010-3, *East Elko Station*, Order No. 477 (June 22, 2010) at 5-6; and Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010 at 65-66. Accordingly, the Commission should reject the Postal Service's argument that section 404(d)(5) does not cover the East Akron Station because it is a station.

Similarly, the Commission should reject the Postal Service's argument that the requirements of 39 U.S.C. § 404(d) do not apply when postal services remain available from postal facilities in close proximity to the facility being closed. The Postal Service bases its argument on the Commission decision in PRC Docket No. A2010-3.¹³ The argument is misplaced. In *East Elko*, the Commission, relying on its earlier decision in *Ecorse* that the procedural requirements of section 404(d) do not apply to a retail facility realignment within a community,¹⁴ dismissed an appeal on the grounds that the customers of the East Elko were not losing access to postal services in their community. *East Elko* at 7-8. This case does not involve the rearrangement of facilities within a community. Not only are the facilities at issue further apart, but the Postal Service's Final Determination by its own terms refers to its actions with respect the East Akron Station as a "consolidation" or "closing." See Final Determination.

B. The Procedures Followed by the Postal Service Require Improvement

Akron argues that the Postal Service failed to observe legally applicable procedures in reaching its decision to close the East Akron Station. Akron Brief at 6-7.

¹³ Docket No. A2010-3, Order Dismissing Appeal, June 22, 2010 (*East Elko*).

¹⁴ Docket No. A2007-1, Order Dismissing Appeal on Jurisdictional Grounds, October 9, 2007 (*Ecorse*).

Included among Akron's assertions are claims that the Postal Service (1) failed to inform customers of their right to appeal the closure decision; (2) include required findings when notifying customers of the closing; (3) post the Final Determination at the East Akron Station; (4) make the Administrative Record available. Akron Brief at 6.¹⁵

The Public Representative agrees with Akron. Customers without a legal or regulatory background who seek to challenge the closing of their post office require at least some guidance, particularly during the initial stages of instituting an appeal. See Comments of the United States Postal Regulatory Commission on Proposed Amendments to Post Office Consolidation and Closing Process, May 2, 2011 at 3-4 (Commission Comments). In this case, it appears that no such guidance was provided because of the Postal Service's continued refusal to acknowledge Commission jurisdiction over the closing of post office stations and branches. Unless and until that legal issue can be authoritatively resolved, the Postal Service should at the time it announces a station or branch closure provide adequate and fair notice to customers of the appeal procedures, including the option of requesting suspension of the closing during an appeal.

For the foregoing reasons, the Public Representative submits that the procedures followed in this case for public involvement do not serve the broader interest of fostering public confidence in the fairness of post office closings. The Commission has itself recognized that the failure to provide customers with a meaningful opportunity to comment on proposed post office closings will foster the "appearance that seeking customer comment is merely an afterthought" and, as such, only devalues customer input. *Id.*

In this case, customers have been fortunate to have had their interests represented by able counsel from the City of Akron. However, the Commission cannot assume that this will always be the case. It is therefore essential that procedures be followed in these cases that ensure that customers who lack professional credentials or

¹⁵ While the Postal Service made the Administrative Record available, it was only after Akron had moved for an order directing the filing of the record. See note 5, *supra*.

the means to obtain legal representation have a fair opportunity to present their concerns regarding proposed closures or consolidations and, if necessary, to seek Commission review of unfavorable Postal Service decisions.

Whether or not the procedural deficiencies in this case warrant a remand to the Postal Service, the Commission should, at a minimum, remind the Postal Service of the Commission's prior admonition that the procedures for obtaining public participation in the discontinuance process need improvement. *See, e.g.,* Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 3, 2010 at 48-56 (Advisory Opinion); *see also*, Commission Comments at 5-7 (Commission Comments). That need includes the need to advise customers of potential appeal opportunities. The goal should not merely be public participation, but meaningful public participation.

C. The Decision to Close the East Akron Station Has Not Been Adequately Justified

Akron argues that the Postal Service's decision is arbitrary and capricious and that its decision is not supported by substantial evidence. Akron's Brief at 3, 6. The Public Representative agrees. As discussed below, the Public Representative submits that the economic justification offered to support closure of the East Akron Station is seriously flawed and requires further consideration and explanation by the Postal Service. In addition, the Postal Service has failed to give adequate consideration to the concerns expressed by customers regarding the ability of the South Arlington Station to provide adequate and effective postal services. Finally, the Postal Service has failed to give adequate consideration to safety concerns expressed by several customers.

1. The Estimated Savings From Closure of the East Akron Station Appear to Be Grossly Overstated

The Postal Service estimates annual savings of approximately \$93,475 from closure of the East Akron Station:

Clerk Salary (PS-6, Minimum)	\$82,704
Fringe Benefits @ 33.5%	26,880
Supervisor Salary (EAS-17, Minimum)	45,084
Fringe Benefits @ 33.5 %	19,184
Rental Costs, Plus Utilities	140,195
 Total Annual Costs	 \$314,047
Less Cost of Replacement Service	-220,572
 Total Annual Savings	 \$93,475

Final Determination at 4.

Most of the projected savings are attributable to the salary and related benefits of postal employees who worked at the station. However, as the Postal Service notes, both clerks and the supervisor will be transferred to the South Arlington Station. *Id.* Without a more complete explanation by the Postal Service, it is unclear how, or in what sense, these salaries and related benefits can be considered "savings" to the Postal Service. This same problem was previously identified by the Commission. Advisory Opinion at 58-59; and Commission Comments at 7-8.

Unless and until the Postal Service provides a justification for considering the clerk's salary and related benefits to be a bona fide "savings" resulting from closure of the East Akron Station, the actual savings projected by the Postal Service should be reduced by the amount of such salary and benefits:

Clerk Salary (PS-6, Minimum)	\$82,704
Fringe Benefits @ 33.5%	26,880
Supervisor Salary (EAS-17, Minimum)	45,084
Fringe Benefits @ 33.5 %	19,184
Rental Costs, Plus Utilities	140,195
 Total Annual Costs	 \$140,195
Less Cost of Replacement Service	-220,572
 Total Annual Savings	 -\$80,377

This adjustment would transform the \$93,475 of projected annual savings into a projected annual loss of \$80,377. A further, and equally important, question is presented by the manner in which the Postal Service accounts for projected lease savings. According to the Final Determination, the projected annual lease and utility savings are \$140,195. Final Determination at 4. Of this amount, annual lease payments are \$99,900. AR Item No. 40 at 2. Moreover, the lease for the Akron East Station had no termination clause and was not scheduled to expire until September 30, 2012. *Id.* Because there was no termination clause, the Postal Service was compelled to buy out the remaining term of the lease. Final Determination at 4. The cost of the buy-out was \$199,800. *Id.* What is unexplained is why the Postal Service would buy out the lease for \$199,800 when, as of the date the East Akron Station was closed (June 17, 2011) there were only 15 months remaining until the scheduled expiration of the lease on September 30, 2012. On a pro rata basis, the remaining lease cost would have been only \$166,500. In either event, the buy-out cost of \$199,900 or the apparent remaining lease cost would reduce the "savings" further. The same can be said of the \$30,000 for building modifications identified in the Final Determination as necessary for consolidation of the East Akron and South Arlington Stations. *Id.*

Related to the issue of whether closure of this post office will produce savings to the Postal Service is the question of whether the closure will otherwise leave revenues unaffected. The Postal Service assumes that closure of the East Akron Station will reduce expenses, but will not adversely affect revenues. Postal Service Comments at 4, n. 8. Akron challenges this assumption and suggests that closure of the post office will adversely affect revenues. Akron Brief at 5-6. The Commission has itself questioned whether such an assumption is justified and has urged the Postal Service to "develop a better methodology for analyzing potential salary and benefit cost savings from discontinued facilities." Advisory Opinion at 59 and 60; and Commission Comments at 7-8. If it were to be concluded that revenues would decline because of the closing, any such loss in revenues would justify a further downward adjustment in projected "savings."

For the foregoing reasons, the Public Representative submits that the projected economic savings, which form the principal basis for the decision to close the East Akron Station, have not been adequately explained or supported.

2. Customer Concerns Have Not Been Adequately Addressed

The Postal Service asserts that it has given adequate consideration to the concerns expressed by customers by customers in their responses to the two rounds of questionnaires. Postal Service Comments at 5. Akron disagrees with that conclusion. Akron's Brief at 4-5.

First, Akron argues that as a result of the consolidation of the East Akron and South Arlington stations, the customer base at South Arlington will effectively double. *Id.* at 5. Akron questions what the effect of this increase in the customer base will have on wait times and alleges that the Postal Service has failed to address how it intends to respond to the increase in the customer base. *Id.* The Postal Service responds by referencing Wait Time in Line information for the South Arlington Station, AR Item No. 16. Postal Service Comments at 4, n.7. It claims that it is this information that is relevant to an assessment of whether the South Arlington Station has the capacity to serve former East Akron Station customers. *Id.* While AR Item No. 16 may be relevant, no explanation is given, nor is one self-evident, regarding how the information contained in that item demonstrates that the doubling of the customer base will not adversely affect wait times at the South Arlington Station.

Second, the Postal Service claims to have given adequate consideration to questions the safety raised by customers of the East Akron Station regarding other postal facilities that they will be required to use. Postal Service Comments at 4. While issues of safety were considered, the consideration appears to have been less than adequate. For example, one person responding to the Postal Service's questionnaire expressed concern because the area in which the South Arlington Station is located has a recognized crime problem. AR Item No. 34 at 73. The proposal sent to Postal Service Headquarters for review responded to that concern as follows:

I realize that with change there is concern. In the past two years there haven't been any reports of security issues on the premises of the South Arlington Station.

AR I 40 at 8. This response is obviously inadequate. Safety within a postal facility does not address the customer's interest in getting safely to and from the facility. By contrast, the Final Determination did not even address safety concerns presented in responses to the questionnaire. While the Postal Service cannot be the guarantor of safety in a community, it should at least give genuine consideration to considerations of safety when it closes and consolidates facilities.

VI. CONCLUSION

The Postal Service's Final Determination to close the East Akron Station is seriously flawed. The analysis fails to satisfy the arbitrary and capricious standard. Essential findings are not supported by substantial evidence. The Commission cannot affirm the closure determination in its present condition and should remand the case to the Postal Service to remedy the deficiencies identified above and in the submissions by Akron and other participants.

Respectfully Submitted,

/s/ Richard A. Oliver

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